IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.764 OF 1996
WITH
CIVIL APPLICATION NO.3747 OF 1996

AND

APPEAL FROM ORDER NO.765 OF 1996
WITH
CIVIL APPLICATION NO.3745 OF 1996

Devshi Manji Shankhla ...Appellant

Versus

M/s.Shruti Builders & Ors. ...Respondents

.....

Appellant present in-person.

Mr.Deepak Chitnis for Respondent No.1.

ALONG WITH

APPEAL FROM ORDER NO.694 OF 1996
WITH
CIVIL APPLICATION NO.3401 OF 1996

AND

APPEAL FROM ORDER NO.695 OF 1996
WITH
CIVIL APPLICATION NO.5459 OF 1996
AND
CIVIL APPLICATION NO.3415 OF 1996

M/s.Shruti Builders & Ors. ...Appellants

Versus

Mr.Devshi Manji Shankhla & Ors. ...Respondents

.....

Mr.Deepak Chitnis for Appellants.

Respondent No.1 present in-person.

.....

CORAM: A.M.KHANWILKAR, J.

MARCH 21, 2006.

P.C.

1. Heard Mr.Chitnis as well Mr.Devshi Manji Shankhla appearing in-person. It is agreed between the parties that instead of considering the rival contentions raised in the present proceedings before this Court, the parties be relegated before the Trial Court by making a provision that the ad-interim order granted by this Court - to the effect that third party rights created in the suit property by the Plaintiff will be subject to the outcome of the present Appeal will enure; and the parties will have to abide by the same arrangement till the disposal of the Suit itself. This arrangement is agreed upon because during the pendency of the Appeals, the Plaintiffs have

already constructed about 13 buildings and third party rights have been created. Obviously, such rights have been created without prejudice to the rights and contentions of the rival parties.

2. The question whether such third party rights will have to be undone, will be considered by the Trial Court at the final hearing of the Suit. As this is the arrangement agreed upon between the parties, without expressing any opinion on the merits of the controversy involved in the proceedings pending before the Trial Court, all these Appeals are disposed of, keeping that questions open to be decided in accordance with law, uninfluenced by the impugned Judgment or for that matter, disposal of the present proceedings by this Court.

3. It is once again made clear that third party rights created by the Plaintiff in the suit property will be subject to the outcome and appropriate orders to be passed by the Trial Court at the final hearing of the Suit and further that

arrangement is without prejudice to the rights and contentions of the rival parties. That it will not

be open to the Appellants or third party to claim any equity at the end of the proceedings or at any stage and all actions taken by them will be at their own risk, cost and consequence thereof.

4. The Bank guarantee given by the Plaintiff in terms of order passed by this Court on the earlier occasion shall be continued and kept alive till the disposal of the Suit or till such appropriate order that will be passed by the Trial Court in that behalf. The Plaintiff will not withdraw the amount deposited by him in terms of order dated 14th June 1996 till the disposal of the Suit or such appropriate order to be passed by the Trial Court in that behalf.

5. It is further made clear that this arrangement is without prejudice to the rights and contentions of the Defendants who have instituted substantive Suit in this Court being Suit No.944 of 1996. All contentions in the said Suit available

to the respective parties are left open to be decided in those proceedings.

6. Appeals and the Civil Applications are disposed of.

A.M.KHANWILKAR, J.